**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**ARBITRATION PETITION NO.195 OF 2002**

Oil and Natural Gas Corporation Ltd. ... Petitioners

v/s

Dolphin Offshore Enterprises (I) Ltd. ... Respondents

Mr D.R. Zaiwala with Mr Pankaj Sawant, Mr Nishit Dhruva and Mr Prakash Shinde i/b M/s M. Dhruva and Co. for Petitioners.

Mr D.D. Madon with Mr Leon Samuel and Ms Deepti Chand i/b M/s Advani and Co. for Respondents.

**CORAM : D.K. DESHMUKH J.**

**DATE : 19TH SEPTEMBER 2005.**

**P.C.** :-

1. By this petition filed under section 34 of the Arbitration and Conciliation Act 1996, the petitioners challenge the award made by the Arbitral Tribunal dated 14th February 2002. The relevant facts are that by contract dated 10th November 1993, the respondents agreed to operate and manage marine and diving services on board vessel MSV 'Samudra Prabha' owned by the respondents. In consideration of freight services provided by the respondents, the petitioners were to reimburse maximum Singapore Dollars 13,20,000. The said contract further provides that the respondents should utilise the stocks and spares lying on board of the said vessel. According to the petitioners, the respondents were entitled to claim maximum SD 13,20,000 towards consumable costs and maintenance costs. A dispute arose between the parties on several grounds. According to the petitioners, the consumable and stocks on board of the vessel were to be used at no cost and therefore, award towards the same is not proper and just. The second point of dispute between the parties was with regard to the valuation of the consumables utilised by the respondents. According to the petitioners, the unit cost in the actual currency of purchase was to be converted into Singapore Dollars as on the date when the

items came on board of the vessel whereas according to the respondents, the unit cost of the actual currency of purchase was to be converted into Indian rupees as on the date of purchase and then once again the cost of Indian rupees was to be converted into Singapore Dollars on the respective dates of consumption. The Arbitral Tribunal arrived at the conclusion that SD 2,76,653.17 are payable to the respondents towards cost of consumed goods and spares. On the second question, the Arbitral Tribunal arrived at different value. According to the petitioners, on the second point, the cost of the items on board used by the respondents in Singapore Dollars would be SD 4,95,483 whereas the Arbitral Tribunal has arrived at the figure of SD 4,35,768.60. This petition was heard for admission and a detailed order was passed by the learned Single Judge of this Court dated 12th September 2002. By that order, the learned Single Judge rejected the contention of the petitioners in so far as the first point is concerned. The learned Single Judge had admitted the petition only on the second point. The learned counsel appearing for petitioners submits that though the learned Single Judge by order dated 12th September 2002 has rejected the contention of the petitioners on the first point, this Court, at the final hearing has to decide the first point again and the petition cannot be restricted by this Court at the final hearing only to the second point. In my opinion, the

submission is not well founded. The learned Single Judge by order dated 12wth September 2002 has rejected the submission and arguments of the petitioners in relation to the first point by a reasoned order. In my opinion, therefore, the petitioners cannot be permitted to reagitate the arguments in relation to the first point at the final hearing. When the learned Single Judge by order dated 12th September 2002 has finally rejected the submission of the petitioners in so far as the first point is concerned, in my opinion, permitting the petitioners to argue the first point at the final hearing would not be in the interest of administration of justice. Therefore, following such a course of action has to be discouraged and avoided. In my opinion therefore, the petitioners can be heard now only on the second point. So far as the second point is concerned, it relates to the items of consumable and spares which were put on board of the vessel by the petitioners. In the Cardex Register that was maintained, following details were noted :-

. 1) Description of the item.

. 2) Date of its receipt on board.

. 3) Quantity consumed.

. 4) Date of currency of the country from which it was imported.

. 5) Date of purchase .

. 6) Consumption date.

. There is no dispute between the parties that the price of the goods mentioned in the Cardex Register is to be taken as the price of the goods. The only dispute between the parties is that how this price of the goods which is mentioned in different currencies is to be converted into Singapore Dollars ? Considering all the submissions made by the rival parties, it is clear that there was also no dispute between the parties as to the date with reference to which conversion is to be done. The contention of the respondents in this regard is reproduced by the Arbitral Tribunal in its award in following manner :-

> "The contention of the Claimants is that to evaluate the costs of the said items in Singapore Dollars, in the first place, the unit price of the items shown in the Cardex Register should be converted into Indian Rupees at the rate of exchange prevailing at the date of receipt of the items on board as appearing on the Cardex Register and then convert Indian Rupees into Singapore Dollars at the rate of exchange prevailing at the date of the conclusion of the contract. According to them if the said method was adopted, the

costs of the said items would come to SD 3,21,888.30."

. It is clear from the contention of the respondents which is quoted above that the respondents were not disputing the price of the items shown in the Register. The only contention urged on behalf of the respondents was that the price of the items mentioned in the Register in the currency of country from which the item was purchased should not be directly converted into Singapore Dollars, but it should be first converted into Indian Rupees and then into Singapore Dollars. If so done, according to the respondents, the cost of items consumed by the respondents would be SD 3,21,888.30. On the other hand, the contention of the petitioners was that the rate at which the items have been purchased should be directly converted into Singapore Dollars and the petitioners be permitted for effecting the conversion calculated on the date of purchase. The submission made on behalf of the petitioners in this regard has been reproduced by the Arbitral Tribunal in the following manner :-

"As against the said contentions of the Claimants, the Respondents have contended that to ascertain the cost of the items on board used by the Claimants, in Singapore Dollars,

> the unit rate of the item recorded in Cardex Register in the currency of the country from which the said items were imported at the time of the receipt of the said item on board, should be converted into Singapore Dollars at the rate of exchange prevailing at the said date of receipt. According to the Respondents, on that basis the cost of the items on board used by the Claimants in Singapore Dollars would come to SD 4,95,483/- as shown in Exh.B1 to their written statement."

. It is clear from what is quoted above that the contention of the petitioners was that there should be direct conversion of the currency in which the item was purchased into Singapore Dollars and the date should be the date on which the item has been purchased. It further appears that the petitioners had also given a chart showing the rate at which item was purchased, date of purchase, quantity consumed, currency in which the purchase was made and conversion of that currency into Singapore Dollars and it was at Exh.B1 to the written statement. According to the petitioners, if so done, the cost of the items consumed comes to SD 4,95,483/-.

. Perusal of the award however shows that the

Arbitral Tribunal rejected the case of the petitioners as also the respondents and the Arbitral Tribunal held that there is no need of converting the currency in which the item has been purchased into Indian currency and then its further conversion to Singapore Dollars and held that conversion can be directly from the currency in which the item has been purchased into Singapore Dollars. But the Arbitral Tribunal came to the conclusion that the date on which the conversion is to be made is the date on which the item has been acquired by the respondents from the store on board. The Arbitral Tribunal has recorded its finding in this regard as follows :-

> "In our view therefore, the conversion of the currency of the items acquired by the Claimants into Singapore Dollars would arise only at the time the Claimants acquired any such items from the store on board and it would be at the rate of exchange prevailing only at the date of such acquisition."

. After having recorded a finding by rejecting the case put up by both the parties, the Arbitral Tribunal found that there is no material on record to arrive at exact figure because on record, there was no data indicating the dates on which each item has been

taken from the store by the respondents and the rate of conversion vis-a-vis that date. Therefore, the Arbitral Tribunal fixed an arbitrary date viz. the mid-term of the contract and worked out the conversion rate with reference to that date.

2. It is this conclusion reached by the Arbitral Tribunal which is under challenge. The submission of the petitioners is that the conclusion reached by the Arbitral Tribunal that the rate on the date on which the item is taken out from the store by the respondents is the relevant date is contrary to the terms of the contract, inasmuch the Arbitral Tribunal has totally ignored the definition of the term 'landed cost'. It is further submitted that as it was not the case of the respondents that conversion rate of different dates from the date of supply is to be taken, the Arbitral Tribunal was not justified in recording the finding. On the other hand, the submission of the respondents is that though it cannot be said that the view that has been taken by the Arbitral Tribunal is the only possible view on the basis of the material on record, according to the learned, the view that has been taken by the Arbitral Tribunal is also a possible view and therefore, this Court should not disturb that finding recorded by the Arbitral Tribunal.

3. The relevant term of the contract regarding reimbursement of the consumables is term 8.6 which reads as under :-

> "8.6 Operational Consumables (Marine and diving):-
>
> . Consumables for the vessel as well as for the operation to be carried out from / by the vessel such as general ship consumables, emergency consumables, shall be supplied by contractor. Commission shall reimburse the landed cost (i.e. at Commission's base at Nhava / 12 VB / helibase, as the case may be) + 5 % service charges, subject to the maximum limit as specified in the price proforma (Annexure-I(B)) and subject to original invoices from the supplier. Consumables provided by Commission shall be accounted for in the total cost of consumables. The cost of such consumables will be charged at the landed cost."

. Perusal of the above clause shows that what was to be reimbursed was the landed cost to the respondents by the petitioners subject to the maximum limit which was mentioned in Singapore Dollars and

therefore, the need arose for conversion of various currencies in which the various items supplied were purchased into Singapore Dollars. The term 'landed cost' is defined by clause 2.15 of the contract which reads as under :-

> "The term 'landed cost' means cost of item(s) supplied at the commission's base at Nhava / 12 VB / Helibase etc. excluding custom duty in case of imported items. Custom duty as applicable on callout equipment, operational consumables and Maintenance spares shall be paid by the Commission against documentary evidence."

. Perusal of the above definition of the term 'landed cost' shows that the cost of the item supplied by the petitioners to the respondents at the base was to be taken into consideration. Thus, reading clauses 2.15 and 8.6 quoted above together show that for the purpose of reimbursement, the cost that is relevant is the cost at which the items were purchased. If that is so, it is this cost which is to be converted into Singapore Dollars only to find out whether it exceeds the maximum limit which is laid down in the contract and therefore, in my opinion, the Arbitral Tribunal was not at all justified in saying that the rate of conversion on the

date on which the item is taken out of the Stores by the respondents should be taken. The finding recorded by the Arbitral Tribunal in this regard quoted above totally ignores the relevant terms of the contract. The learned counsel appearing for respondents therefore, in my opinion, is not justified in submitting that the view taken by the Arbitral Tribunal is a possible view. In my opinion, the parties had gone to the Arbitral Tribunal with their respective cases, they had also given their respective calculations. In these circumstances, therefore, the Arbitral Tribunal could have either accepted the case put up by the petitioners or the respondents. The course adopted by the Arbitral Tribunal of arriving at the conclusion which is neither the case of the petitioners nor the respondents and because there is not data available on record, making an award with reference to the hypothetical date, in my opinion, is not proper course to be followed by the Arbitral Tribunal. In my opinion, the submission of the petitioners that the rate of conversion should be that rate which is prevalent on the date of purchase of the item was well founded and should have been accepted by the Arbitral Tribunal.

4. At this stage, a request is made by the learned counsel appearing for petitioners that in view of the above finding, the entire award should be set

aside. In view of the order dated 12th September 2002 passed in this petition, holding the award on the first point to be valid, in my opinion, it will not be appropriate for me to set aside the entire award. Therefore, I am setting aside only the finding recorded by the learned Arbitrators as indicated above leaving the petitioners to their own remedy. Petition is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary of this Court as true copy.

. Certified copy expedited.

---